

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.

Writ Petition No. 3781 OF 2006

PETITIONER :

Balkrishna Agrawal,
S/o. Late Shri R.D. Agrawal,
Aged about 49 years,
R/o. 24, Doongagi Colony,
Raipur (CG).

Versus

RESPONDENTS :

1. The State of Chhattisgarh,
Through the Secretary, Co-
operative Department,
Mantralaya, D.K.S. Bhawan,
Raipur, CG.
2. The Registrar, Co-operative
Societies, Raipur, CG.
3. The Deputy Registrar, Co-
operative Societies, Raipur (CG).
4. The Joint Registrar, Co-operative
Societies, Raipur, CG.
5. Agroha Grih Nirman Sahkari
Samiti Maryadit (a registered Co-
operative Society), through its
Manager, Shri Krishna Kumar
Gehre, Agresen Nagar, Ring
Road Chowk, Mahadeo Ghat
Road, Raipur (CG).
6. Hari Ram Charitable Trust,
through its President Shri
Rajendra Goyal, New Timber
Market, Fafadeeh, Raipur (CG).

Present :-

Shri Rajeev Shrivastava, counsel for the petitioner.
Shri N.K. Agrawal, Deputy Advocate General for respondents No. 1
to 4/State.
Shri V.S. Agrawal, counsel for respondent No.5.
Shri Ravish Agrawal, Sr. Advocate with Shri Manindra Shrivastava,
Sr. Advocate and Shri Sanjay S. Agrawal, counsel for respondent
No.6.
Shri Gautam Bhaduri, counsel for Intervener – Santosh Agrawal

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ORDER
(Passed on 09/02/2007)

This petition under Article 226/227 of the Constitution of India, has been filed seeking following reliefs:

"To issue writ of certiorari for quashing the order dated 19/05/2006 passed by the Joint Registrar, Co-operative Societies, Raipur."

2) Respondent No.5 prepared a plan to construct a colony at Agrasen Nagar at village Raipura. In the said colony land measuring 6.54 acres bearing Khasra Nos. 346, 337/3, 339, 344, 338/2, 345/2 and 340 has been kept reserved for educational purpose. Subsequently, the said land was sold to respondent No.6 for educational purpose vide registered sale deed dated 29/09/2001. However, respondent No.6 did not commence construction on the said land, therefore, a resolution to seek permission from the Registrar, Co-operative Societies to cancel the sale deed was passed on 15/02/2006 by respondent No.5 and after obtaining permission the above land was re-sold in favour of the petitioner. Thereafter, vide order dated 19/05/2006 respondent No.3 declared the sale deed executed in favour of the petitioner as illegal and void, hence the instant petition.

3) The petition has been opposed by respondents in a forceful manner alleging that in order to correct the mistake in sale deed dated 29/09/2001 with regard to Khasra numbers, respondent No.5 executed correction deed on 25/10/2005 in favour of respondent No.6 through its Manager Balkrishna Agrawal, who is petitioner in the instant petition, but this fact of correction has been suppressed and suppressing the material fact, permission to re-sale the land has been obtained. Therefore, when the matter of suppressing the material facts was brought to the notice of the Joint Registrar, Co-operative Societies, he recalled earlier order

dated 13/04/2006 vide impugned order and directed respondent No.5 to cancel the subsequent sale deed executed in favour of Balkrishna Agrawal.

4) Undisputedly, the disputed land has been sold by respondent No.5 to respondent No.6 by registered sale deed for consideration and subsequently errors were corrected by respondent No.5 through petitioner himself on 25/10/2005, but without disclosing the fact, permission to re-sell was sought and the Joint Registrar vide letter dated 13/04/2006 accorded permission to it. Subsequently when suppression of material facts was brought to his notice, he recalled his earlier order vide impugned order.

5) During the course of arguments very specifically this question was asked by the Court to appraise the provision which authorized Joint Registrar to permit a registered society to sell society's land or to direct cancellation of any registered sale deed. None of the parties succeeded showing any such provision. On the other hand, they frankly conceded that no such provision has been enacted so far which authorizes Joint Registrar to permit execution of sale of society's land or to cancel registered sale deeds. When respondent No.5 sold its land to respondent No.6 by a registered sale deed, if for any reason it was required to be cancelled, it could have been cancelled only in accordance with law, but to establish cancellation of the sale deed no document has been adduced. When earlier transfer made by a registered sale deed is in existence, subsequent sale deed executed in favour of petitioner, if it is to be enforced, that can only be enforced by declaration by a competent court or otherwise in accordance with other legal manner. Title can only be ascertained after determination of various facts as alleged by both the parties which require legal evidence and factual adjudication.

6) When Joint Registrar was not empowered to grant permission to respondent No.5 to sell the land, automatically recalling of such permission is redundant.

7) In the result, not only the order dated 13/04/2006 according permission to society by the Joint Registrar is cancelled, but sequent thereto recalling the said order vide impugned order is also cancelled.

Sd/-
V.K. Shrivastava
Judge

Raju